
IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Civil Nos. 2:07 CV828 TC
Petitioner,	:	REPORT & RECOMMENDATION
vs.	:	Honorable Tena Campbell Magistrate Judge Brooke Wells
JIMMY D. RODEBACK, JR's Custom Muffler & Brake, Inc.,	:	
Respondent.	:	

The United States of America filed a petition to enforce its October 29, 2007 IRS Summons (“the Summons”) pursuant to 26 U.S.C. §§ 7402(b) and 7604(a). Judge Campbell issued an Order to Show Cause (“OTSC”) on October 30, 2007, which referred this matter to Magistrate Judge Brooke Wells for a hearing scheduled for December 11, 2007.

The OTSC directed Respondent to file a written response supported by sworn affidavits to the United States’ Petition to Enforce the Summons (“the Petition”) within ten days of the OTSC being served upon him. The OTSC also directed the undersigned to convene a hearing on December 11, 2007 at 9:00 a.m. to hear any arguments that would assist the undersigned in determining whether Respondent has shown cause.

On December 11, 2007, this Court convened a hearing, but Respondent failed to appear, and a bench warrant was issued for Respondent’s arrest. Upon learning of the bench warrant, Respondent contacted chambers and set a new hearing date for January 16, 2008 at 10:30 a.m., upon which the bench warrant was withdrawn.

On January 16, 2008, this Court waited 20 minutes past 10:30 a.m. to convene the hearing, but Respondent did not appear and, again, a bench warrant was issued. However, Respondent arrived a few minutes after this Court adjourned, and this matter was finally heard at 11:05 a.m. Based on the arguments and representations presented in the Petition and at the January 16, 2008 hearing, the undersigned reports the following:

1. The United States has carried its burden of proof to enforce the Summons. Through the Summons and the declaration of the revenue officer that were attached to the Petition, the United States established that: (1) it sought the summoned information for a legitimate purpose, (2) the summoned information is relevant to the legitimate purpose, (3) the summoned information was not already in the possession of the United States; and (4) that the United States followed proper administrative procedures.

2. Once the United States has established its initial burden of proof, the burden shifts to Respondent to show why he should not be compelled to comply with the Summons. Respondent failed to submit any timely written objection as required by the OTSC; and by the OTSC's terms, the allegations contained in the Petition are deemed admitted. Furthermore, Respondent agreed to provide the documents requested by the Summons within 30 days from the date that the District Court adopts this Report and Recommendation.

Consequently, the undersigned recommends that:

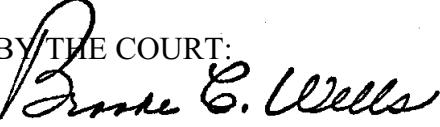
1. The District Court find that Respondent has failed to show cause why he should not be compelled to comply with the Summons; and

2. The District Court order Respondent to provide the the information required by the Summons to his legal counsel's office by no later than 30 days after the District Court adopt this

Report and Recommendation. The IRS offices are located at 50 South 200 East, Salt Lake City, Utah 84111.

Within 10 days after being served with a copy of this Report and Recommendation, a party may serve and file specific, written objections. A party may respond to another party's objections within 10 days after being served with a copy thereof. Pursuant to 28 U.S.C. § 636(b)(1)(C), the District Judge to whom this case is assigned shall make a de novo determination upon the record of any portion of the undersigned's disposition to which specific written objection has been made. The District Judge may accept, reject, or modify the recommended decision, receive further evidence, or re-commit the matter to the magistrate judge with instructions.

DATED this 16th day of January 2008.

BY THE COURT:


BROOKE WELLS, Magistrate Judge
United States District Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Utah, and that a copy of the foregoing **REPORT & RECOMMENDATION** was mailed, postage prepaid, this 16th day of January 2008 to the following:

Jimmy D. Rodeback
JR's Custom Muffler & Brake, Inc.
1142 N 750 W
PROVO, UT 84604

/s/ Jared C. Bennett